

(b) The Superintendent may not pay claims nor make distribution of an estate during the pendency of proceedings under § 4.241 or § 4.242 unless the administrative law judge orders otherwise in writing. The Board may, at any time, authorize the administrative law judge to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24814, Dec. 23, 1971; 55 FR 43133, Oct. 26, 1990]

#### MISCELLANEOUS

##### § 4.281 Claims for attorney fees.

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the administrative law judge. At the administrative law judge's discretion such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees shall be filed prior to the close of the last hearing and shall be supported by such proof as is required by the administrative law judge. In determining attorney fees, consideration shall be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein shall prevent an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

##### § 4.282 Guardians for incompetents.

Minors and other legal incompetents who are parties in interest shall be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the administrative law judge.

#### TRIBAL PURCHASE OF INTERESTS UNDER SPECIAL STATUTES

SOURCE: 45 FR 50331, July 29, 1980, unless otherwise noted.

##### § 4.300 Authority and scope.

(a) The rules and procedures set forth in §§ 4.300 through 4.308 apply only to proceedings in Indian probate which relate to the tribal purchase of a decedent's interests in trust and restricted land as provided by:

(1) The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968), with respect to trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951);

(2) The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530), with respect to trust or restricted land within the Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37); and

(3) The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744), with respect to trust or restricted land within the Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).

(b)(1) In the exercise of probate authority, an administrative law judge shall determine: (i) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes; (ii) the entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests which have been purchased by a tribe; and (iii) the fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(2) In the determination under paragraph (b)(1) of this section of the entitlement of a tribe to purchase the interests of an heir or devisee, the issues of: (i) Enrollment or refusal of the tribe to enroll a specific individual and (ii) specification of blood quantum, where pertinent, shall be determined by the official tribal roll which shall be binding upon the administrative law judge. For good cause shown, the administrative law judge may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.